

**Town of Tuftonboro**

**Docket No.: 21491-05RA**

**ORDER**

On December 1, 2005 a petition was filed with the board by Mr. Brian Deshaies (“Lead Petitioner”) pursuant to RSA 71:B-16, IV. In keeping with TAX 208.05(a)(3), one of the board’s review appraisers performed an investigation of the quality of the reassessment and assessing practices that occurred during the 2005 reassessment and filed a report (“Report”) on March 3, 2006. A hearing was held on May 11, 2006 to receive testimony and evidence from the petitioners, “Town” officials, the Town’s assessing contractor, Avitar Associates of New England, Inc. (“Avitar”) and taxpayers as to the need for reassessment or any other remedial action.

In attendance at the May 11, 2006 hearing were Ms. Susan Weeks and Mr. William Albee, members of the Tuftonboro selectboard, Mr. Gary J. Roberge and Ms. Loren Martin of Avitar, a number of taxpayers and petitioners including lead petitioner, Brian Deshaies and several department of revenue administration officials (“DRA”).

Mr. Deshaies and other petitioners cited concerns of inconsistent assessments in waterfront and island properties and that, in many instances, values had changed significantly following the informal review process at the conclusion of the reassessment. Concerns were also expressed about different methodologies in assigning value to the water access rights of lots in subdivisions with shared waterfront amenities.

Representatives of Avitar asserted (see Municipality Exhibit A) that the Report was flawed in its analysis and conclusion and that a reworking of the four month subsequent sales analysis, excluding certain sales and including others, produced acceptable measures of assessment equity including a coefficient of dispersion (“COD”) of 15.08. Avitar representatives also testified there were different methodologies employed in shared waterfront subdivisions based on the availability of sales and their appraisal judgment as to how to treat the waterfront amenity value. Avitar representatives stated any remaining problems of inconsistent assessments were being handled through the abatement process and at this point no remedial reassessment order was warranted from this board.

The Tuftonboro Selectmen stated that they were currently working through the filed abatements and only approximately \$3 million of abatements have been issued on an overall tax base of nearly \$1 billion indicating that, by and large, any problems were minimal. The selectmen also noted that very few of the petitioners in this action had filed for individual abatement requests for their properties. The Town has contracted with Municipal Resource Incorporated (“MRI”) to perform the annual pickups and will, after completing the abatement process and receiving the board’s order in this docket, develop a plan towards ensuring ongoing assessment equity. David Hynes, of DRA, noted that 2005 was the last certification review year (see RSA 21-J:11-a) and the Town’s next assessment review would not occur until 2010.

### **BTLA’s Rulings**

RSA 71-B:16 authorizes the board to order a reassessment when it determines assessments have been “fraudulently, improperly, unequally, or illegally assessed<sup>1</sup>”. Further,

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<sup>1</sup> RSA 71-B:16 in part provides:

The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state:

...

II. When it comes to the attention of the board from any source, except as provided in paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed; or

RSA 71-B:16-a, contains the criteria for the board to consider before ordering any reassessment or remedial action.<sup>2</sup>

Based on a review of the petitioners' assertions, the Report and the testimony and evidence received at the hearing from Town, Avitar and DRA officials, the board concludes:

- 1) insufficient evidence exists at this time to order any immediate reassessment; and
- 2) based on a review of Avitar's assessment manual for Tuftonboro and in keeping with the board's series of findings in Town of Orford, Docket No.: 21473-05RA, further documentation of the sales analysis performed during the 2005 reassessment is necessary.

Before providing detailed findings relative to these two conclusions, a general comment relative to the process of the board's review of reassessments is in order.

At hearing, Avitar submitted a document dated May 11, 2006 (Municipality Exhibit A) ("Avitar Letter") which forcefully challenged the petitioners' arguments and the board's review appraiser's analyses and conclusions in her March 3, 2006 Report, asserting that "neither the petitioners nor the Board[']s reviewer have provided any credible information to remotely suggest that the 04/01/05 revaluation was anything but sound and well done". The board would remind the parties that the legislature has provided, through RSA 71-B:14, two review appraisers to file such reports in reassessment, individual property tax and eminent domain appeals. The

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III. When in the judgment of the board, determined in accordance with RSA 71-B:16-a, any or all of the property in a taxing district should be reassessed or newly assessed; or

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less; or

V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.

<sup>2</sup> RSA 71-B:16-a states: Prior to making any determination to order a reassessment or a new assessment under RSA 71-B:16, III, the board shall give notice to the selectmen or assessors of the taxing district and, if requested, hold a hearing on the matter at which the selectmen or assessors shall have the opportunity to be heard. The board shall not order any such reassessment or new assessment unless it determines a need therefore utilizing the following criteria:

- I. The need for periodic reassessment to maintain current equity.
- II. The time elapsed since the last complete reassessment in the taxing district.
- III. The ratio of sales prices to assessed valuation in the taxing district and the dispersion thereof.
- IV. The quality of the taxing district's program for maintenance of assessment equity.
- V. The taxing district's plans for reassessment.

Report, however, is not binding on the board but is simply part of the evidence the board may consider and weigh in determining whether to order a reassessment.

While the board can appreciate Avitar's frustration in expending additional resources in addressing the concerns raised in the petition and the Report, the legislature has provided this process for New Hampshire taxpayers to challenge, on a systemic basis, the need for improved assessment equity throughout a municipality in addition to appealing their individual assessments through RSA 76:16-a or 17. While certainly petitions and appeals require municipal officials and their contractors to invest significant time, they are important processes for taxpayers to audit the assessing function entrusted to municipalities in the first instance. These RSA 71-B:16, IV petitions are part of the "auditing procedures" and "enforcement measures" to ensure equitable market related assessments as discussed in Sirrell v. State, 146 N.H. 364, 374 and 384 (2001). ("[I]n 1999, no comprehensive auditing procedures are yet in place to verify that assessments are being performed correctly and accurately at the local level." The State must implement effective enforcement measures to ensure assessments are proportional.)

Avitar may believe it to be inefficient and troublesome to have to explain and defend how assessments were derived and calculated; however, our representative form of government requires that those entrusted (either directly by statute or indirectly by contract) with the important responsibility of assessing and equitably dividing the tax burden be responsive and accountable to those who are directly and immediately impacted: the taxpayers. By its very nature, a government with built-in checks and balances may result in some inefficiency; however, that is one of the necessary costs so that no one branch of government dominates and so that its citizens have recourse. See Opinion of the Justices, 141 N.H. 562, 569 (1997); Town of Littleton v. Taylor, 138 N.H. 419, 423 (1994); and Foote v. State Personnel Commission, 116 N.H. 145, 148 (1976).

The legislature has also given this board the authority and responsibility to review assessments under RSA 71-B:16 and have its review appraisers do investigations and file reports. Part of the board's review process is to hold hearings and receive testimony and evidence, as the board did in this case on May 11, 2006, from parties impacted by the reassessment, including taxpayers, municipal officials and its assessing contractors. In crafting a remedy, the board reviews and weighs factual and documented assertions presented by all relevant individuals. Consequently, Avitar should view any critiquing of its work by the taxpayers or the state as part of the healthy review process of a reassessment and should respond with facts if they believe the critique is wrong so that the board can weigh the factual evidence in determining any need for reassessment.

#### **Need for Immediate Reassessment**

The Town contracted with Avitar to perform the 2005 reassessment to comply with its constitutional and statutory requirements that property be valued every five years. Part II, Article 6 of the New Hampshire Constitution; RSA 75:8-a; and Sirrell, 146 N.H. at 364. Avitar reviewed sales that occurred between October 1, 2003 and September 29, 2005 in establishing the assessment models that created the 2005 assessed values. Avitar's assessment manual indicated (based on the 163 qualified sales utilized during this time period) the reassessment resulted in a median ratio of 1.01 with a COD of 6.93. The Report analyzed 36 sales that occurred four months subsequent to the reassessment encompassing August 2005 through December 2005. The Report indicated an overall median ratio of 1.01 and a COD of 19.69. See Report at p.12. The Report also performed a stratified analysis of several types of property including one for waterfront sales and island sales. Both indicated high CODs and for island properties a median ratio of 1.20. The Avitar Letter critiqued the Report's subsequent sales ratio study by excluding certain sales Avitar considered invalid and including several October 2005 sales omitted from the Report, concluded an overall median ratio of 1.00 and a COD of 15.08

and argued there were too few qualified island sales to draw any reliable conclusions as to the equity of the island assessments.

Based on the above, the board finds several of the RSA 71-B:16-a criteria (the need for periodic reassessment, time elapsed since last complete reassessment and the ratio of sales prices to assessed valuation) have been met by the recent 2005 reassessment. While the Report indicated a concern about the level of assessment for island properties, the board concludes, based on the Avitar Letter's review of the sales utilized in the Report, such concerns may at this time be premature. While the board does not accept all of Avitar's exclusion of certain sales, especially those involving multiple parcels, without further investigation, we agree additional time and market data need to occur for there to be any reliable conclusion made of the assessment equity of waterfront or island properties.

The board must express some concern, however, of the fact the COD of approximately 6.93% arrived at during the reassessment based on two years of sales more than doubled to 15.08% based on the 38 sales qualified and analyzed in the Avitar Letter four months subsequent to the revaluation.<sup>3</sup> This significant increase in the COD in the ratio study of sales four months subsequent to the reassessment (half of which were included in Avitar's original analysis) raises a concern as to whether some update in the near future may be warranted. However, until such market data transpires and the Town has an opportunity to analyze the sales, the board finds it is premature to order any remedial action at this time. The selectmen's testimony indicated they had a clear understanding of their assessing responsibilities and that a plan to address their RSA 75:8 annual assessment responsibilities would be developed after the abatements have been handled by Avitar. The board would encourage the selectmen to incorporate some ongoing annual review of assessment equity as part of their reassessment plans.

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<sup>3</sup> The board would note that Avitar's reassessment analysis period included the months of August and September of 2005 which are the first two months of the four month subsequent ratio study analyzed in the Report and critiqued in the Avitar Letter.

The concerns raised by the petitioners relative to the methodology employed in assessing waterfront access and island properties alone do not warrant the board ordering any reassessment at this time. Many of those concerns, if they result in disproportionate assessments, should be addressed through the abatement and appeal process for individual properties. See Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003) (a finding of flawed assessment methodology, in and of itself, does not necessarily prove the assessment is disproportionate.) Improved documentation of the sales analysis employed during the reassessment, addressed in the next section of this Order, should also benefit taxpayers in understanding and, if necessary, appealing their assessments if they believe the analysis and methodology does not result in proportionate assessments of their properties.

#### **Sales Analysis and Documentation**

As part of the review appraiser's investigation, the 2005 reassessment manual prepared by Avitar was obtained from the Town. The board has had the chance to review that manual and finds it contains many useful and helpful descriptions relative to the land valuation adjustments and the land and building pricing schedules to enable taxpayers and municipal officials and other assessors to understand the assessment-record cards. Avitar should be commended for summarizing its base rates and major adjustments utilized during the 2005 Tuftonboro reassessment.

However, as in Orford, the manual describes the sales analysis process and identifies the sales utilized in arriving at the different base rates, but does not contain any detailed analysis that demonstrates how the base rates and major adjustment factors were either derived from sales or estimated where sales were lacking. Avitar testified at the hearing that the Tuftonboro reassessment was concluded prior to the board's issuance of the Orford order on November 3, 2005 and thus such documentation as done in Orford had not been performed in Tuftonboro. The board has also reviewed the Town's contract with Avitar and the applicable DRA rules and

concludes that such analysis and documentation should have been performed for all the general observations contained in the Town of Orford, Docket No.: 21473-05RA, November 3, 2005 Reassessment Order, in particular pages 10 through 16, (attached as Addendum A).

Because it is important for Town officials and taxpayers to have such documentation to improve the understanding of the basis of the assessments and facilitate their maintenance by the Town, the board orders the Town to have such documentation performed for the major base rates and adjustments such as primary base lot value, waterfront factors, island properties' factors, condominium development amenities and views. As the board has noted before, "[w]ithout such analysis and documentation providing more transparency, it is difficult for the local assessing officials and taxpayers to have confidence in the results; such documentation is especially helpful when assessments are challenged. Reiterative ratio studies, which have been used [in Tuftonboro] and in many municipalities to establish assessment models, do not provide that ability for selectmen or taxpayers to understand the analysis of individual sales and to be able to critique it. The board finds well-documented extraction analyses, if they were provided prior to municipal acceptance of values, would provide for this ability to understand and critique the assessment models and, if necessary, adjust them if appropriate insights are received on the sales that the contract assessors may have been unaware of. ...[W]hile such analyses may not allay all the concerns presented by the [petitioners], it goes a long way toward bridging the prior information gap that existed between local sales data and the assessment-record cards generated for taxpayers." Town of Orford, Docket No. 21473-05RA, March 8, 2006 Order p. 4.

Further, such documentation and the resulting insight it provides of how assessment methodology is market derived and based is an important part of ensuring assessments and the RSA 76:3 statewide education taxes are proportional between taxpayers in different taxing jurisdictions. In Sirrell at 373, the court established a standard of proof relative to challenging that assessments are unconstitutional under the uniformity clause of the constitution. "We now

hold that to establish a violation of the uniformity clause based upon the underassessment of other taxpayers, a taxpayer must prove a systematic pattern of taxation that is not proportional and reasonable. To prevail, the taxpayer must prove specific facts showing a ‘widespread scheme of intentional discrimination’.” [Citation Omitted.] Thus, for municipalities to defend (or for taxpayers to be able to meaningfully audit and challenge) any underassessment is not a “widespread scheme of intentional discrimination” and results in a “systematic pattern of taxation that is not proportional and reasonable,” clear and understandable market data analyses and documentation must be available. Municipalities or their assessing contractors may argue a reason for not opening up the “black box” of computerized mass appraisal systems and provide documented analyses is that by doing so taxpayers will only be encouraged to further challenge their assessments and its various components. We would disagree with this proposition. Rather a municipality’s best defense of its assessments is full disclosure of how the assessments and their principal assessment models were market derived. “All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive.” Part I, Article 8 of the New Hampshire Constitution. Sirrell at 373 (the approximation of proportionate assessments requires “absolute good faith and the best abilities of the public officers charged with making valuations.”)

Consequently, the Town shall, within ninety (90) days of the clerk’s date of this Order, obtain such improved documentation similar to that presented in Orford for the applicable base rates and major adjustments for Tuftonboro along with any explanations and discussions to facilitate how the analyses and correlated values were derived and utilized in the assessment models. The board will retain jurisdiction in this matter until receiving and reviewing a copy of such documentation and will then issue an appropriate order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid to: Brian Deshaies, 60 Williamine Drive, Newton, NH 03858, Lead Petitioner; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm; Chairman, Board of Selectmen, Town of Tuftonboro, PO Box 98, Center Tuftonboro, NH 03816; Evan J. Boris, Squirrel Island Association, 4620 West Caldwell Avenue, Unit A, Visalia, CA 93277; Garreth Chehames, PO Box 111, Melvin Village, NH 03850; and Guy Petell, State of New Hampshire Department of Revenue Administration, PO Box 487, Concord, NH 03302, Interested Parties.

Date: June 19, 2006

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Anne M. Stelmach, Clerk